

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Cook County State's Attorney	:	
	:	
Motion for Stay of commencement of	:	01-0066
Customer Education and Order requiring	:	
NeuStar to demonstrate that the 847 NPA	:	
is, in fact, exhausted.	:	

ORDER

By the Commission:

By its Motion to Withdraw Commission's Request to the Hearing Examiners to Address Certain Questions in this Docket and to Close the Docket, filed on March 6, 2001, the Staff of the Illinois Commerce Commission ("Staff") has asked for certain relief which only this Commission can provide. At the outset, it asks the Commission to withdraw its request for the Hearing Examiners to address certain questions in the instant docket. Further, If the Commission agrees with this proposal, Staff asks that it close this docket.

Pursuant to a schedule set by the Hearing Examiners, written responses to the instant motion were filed by Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech Illinois" or "AI") and Southwestern Bell Mobile Systems d/b/a Cingular Wireless ("Cingular"), and the Cook County State's Attorney's Office ("Cook County"). Only Cook County opposes Staff's motion.

Staff filed its Reply to Cook County's Response on March 15, 2001.

The Hearing Examiner's Proposed Order issued on March 26, 2001. There after, Cook County filed a Brief on Exceptions and Briefs in Reply to Exceptions were filed by Staff and jointly by Cingular and AI. (The latter was titled a Response.)

I. Background:

This docket was opened by the Hearing Examiners on January 24, 2001 based on their determination that Cook County's Motion for Stay of Commencement of Customer Education and Order Requiring NeuStar to Demonstrate that the 847 NPA Is, in Fact, Exhausted filed on January 22, 2001, in Docket 98-0847 was not proper for

consideration in that docket.¹ (See, Hearing Examiners Ruling, ICC Docket 98-0847; January 24, 2001), As such, the caption of the motion became the caption for the new and instant docket . They further determined that “to the extent that other issues arise relating to the 847 area code or the Commission’s Order in 98-0497, this new docket will be considered appropriate for the filing of such pleadings pending further action.” (Id.).

In its January 22, 2001 motion, Cook County asked the Commission to determine whether certain NXX codes designated, for various reasons, as unassignable by the industry could in fact be assigned in the 847 NPA. (Motion at 4-5). Cook County also asked the Commission to stay the start of consumer education relating to the 224 overlay NPA until at least February 17, 2001. (Id. at 2). A hearing was held on February 6, 2001 to discuss the motion at the conclusion of which the Hearing Examiners requested the parties to file comments addressing the “viability of releasing the nine NXX codes that are technically assignable but which the Industry does not recommend for assignment i.e., 219,, 224, 312, 630, 668, 708, 809, 815, and 847.” (See, Hearing Examiners’ Ruling, Docket 01-0066 (Feb. 7, 2001)).

Independent of anything in this docket, on February 15, 2001 the Commission sent out a letter to Kimberly D. Wheeler, (counsel for NeuStar, as the North American Numbering Plan Administrator (“NANPA”)), wherein it rejected NeuStar’s letter of January 17, 2001 indicating NXX code exhaust in the 847 NPA. (See, Exhibit 1 attached to Staff motion; Letter from Illinois Commerce Commission to Kimberly D. Wheeler dated 2/15/01, “Commission Letter”). Also in this letter, the Commission directed NeuStar “to reevaluate the status of 847 exhaust, and until such time such as reevaluation is completed, to not issue any 224 NXX codes or to begin customer education.” (Id. at 2). Finally, the Commission directed NeuStar to:

1. Reclaim NXX codes, if any, from carriers which have not been activated;
2. Withhold additional numbering resources from carriers that fail to provide accurate utilization and forecast data with NeuStar as required by the FCC; and
3. Call upon carriers to review the NXX codes each is holding to determine whether any full NXX codes can be returned. (Id.)

Further on February 16, 2001, the Commission issued an Interim Order in this docket directing that NXX codes 219, 224, 312, 630, 668, 708, 809, 815, and 847 be reclassified as assignable and utilized immediately. (See, Interim Order at 2, Docket 01-0066; Feb. 16, 2001). The Commission also found that the docket should remain open per the Hearing Examiners’ January 24, 2001, ruling. (Id.)

¹ Docket 98-0847 is captioned - **Petition for Approval of NPA Relief Plans for the 312, 630 and 773 NPAs.**

On February 15, 2001, the Hearing Examiners issued a ruling stating that the Commission directed them to make the following determinations in this docket:

1. whether there are any NXX codes in the possession of certified carriers that have few, or no numbers assigned to customers;
2. whether there are between 35 and 51 full NXX codes in the 847 NPA without a single working phone number;
3. whether there are 39 NXX codes for which carriers did not file utilization data, and if so, are the codes being utilized and at what rate.

(See, Hearing Examiners' Ruling, ICC Docket 01-0066 (Feb. 15, 2001)).

In addition, the Hearing Examiners decided that number utilization data filed with NeuStar on February 1, 2001, was necessary to make the determinations and, accordingly, required NeuStar to file that data with the Chief Clerk of the Commission as a "proprietary" document. The Hearing Examiners also requested that NeuStar respond to items 1-3 above, to the extent it is able to, in a verified report. Id. On February 20, 2001, NeuStar indicated that it sent, under seal, the requested utilization data to the Hearing Examiners.

II. The Instant Staff Motion

a. Withdrawal of Commission's Questions

At the outset, Staff requests that the Commission withdraw its directive to the Hearing Examiners. Staff contends that the questions asked by the Commission are best put to Staff outside of the docket. As the Commission is aware Staff claims, it is currently reviewing the issues surrounding NXX code exhaust in the 847 NPA. According to Staff, it has reviewed the utilization data, and continues to review utilization data, on an ongoing basis. Furthermore, Staff routinely consults with NANPA and the Pooling Administrator on area code and number pooling matters. Staff is, it asserts, an informed, nonpartisan entity. The information sought by the Commission, Staff maintains, is readily ascertainable from the utilization data and Staff is prepared to timely report its findings to the Commission.

Further, Staff contends that the questions asked by the Commission implicate reclamation issues. Staff asserts that the question whether the Commission should accept the FCC's delegation of reclamation authority and, if so, the process by which the Commission should carry out the reclamation of NXX codes are issues best determined outside of a formal docketed proceeding. Moreover, information submitted

by codeholders to NANPA is often corrected, updated, and supplemented, all of which further militates in favor of an informal process between Staff and NANPA.

For each and all of these reasons, Staff requests that the Commission withdraw its direction to the Hearing Examiners to address the aforementioned questions in this docket.

b. Closing the Docket

If the Commission agrees to withdraw its directive to the Hearing Examiners, Staff maintains that it should also close this docket. According to Staff, the Commission's actions of February 15 and 16 have given Cook County the relief it sought in its motion. At the outset, Staff explains, Cook County sought a Commission determination that some 29 NXX codes in the 847 NPA considered unassignable by the industry were in fact assignable. The Commission determined that nine NXX codes designated unassignable should be assigned and directed NeuStar to implement that determination. In addition, Cook County asked that consumer education regarding the 224 overlay NPA not begin on February 17, 2001. Here too, the Commission directed NeuStar to postpone consumer education until it has reevaluated the status of exhaust in the 847 NPA. Thus, Staff asserts, the only issues for left in this docket are those questions of the Commission set out in the Hearing Examiners' ruling of February 15, 2001.

c. Other Pending Matters:

Staff notes that Cook County has recently filed a motion asking the Hearing Examiners to issue subpoenas duces tecum to allow Cook County to obtain utilization data for the 847 NPA. (Motion for Issuance of Subpoenas Duces Tecum of the Cook County State's Attorney, Docket 01-0066 (filed February 28, 2001)). Cook County indicates that its request for access to the February 1, 2001, utilization data sent to the Hearing Examiners by NANPA is based on the Hearings Examiners' ruling of February 15, 2001, requesting that NANPA respond in a verified report to three questions. (Cook County Mot. ¶ 8).

According to Cook County, "[a]ccess to this data is necessary to enable [Cook County] to respond to the evidence revealed by the data on behalf of the People of Cook County in the same manner that NeuStar is allowed to respond on behalf of the telecommunications industry in its role as NANPA. Id. According to Staff, the Cook County request for access to data for the 847 NPA is contingent upon the Commission's questions remaining a part of this docket. If the Commission sees fit to withdraw those questions as per the pending motion, Staff asserts that Cook County's request would be rendered moot.

Responses to the Cook County Motion were filed by WorldCom, Inc., Ameritech Illinois, Nextlink Communications, Inc, Cingular, and AT&T. There has been no ruling on this particular motion.

III. Responses To The Staff Motion

Cook County filed a response in opposition to Staff's motion; Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech Illinois" or "AI") and Southwestern Bell Mobile Systems d/b/a Cingular Wireless ("Cingular Wireless") filed responses in support of Staff's motion.

In its Reply to Response To Motion for Subpoena Duces Tecum and Response to ICC Staff's Motion to Withdraw filed on March 13, 2001, Cook County maintains that unless it is given access to the information it seeks under its Motion for Subpoenas Duces Tecum, there is no way for it to meaningfully address the questions propounded by the Hearing Examiners pursuant to the Commission's directive. Indeed, Cook County asserts, to deny its Motion would be tantamount to dismissing the case. (Reply at 2). With respect to Staff's motion, Cook County maintains that the issues are best addressed in this formal proceeding and asks that the Commission deny Staff its requested relief.

Ameritech Illinois concurs in, and supports, the Staff motion in full. The questions addressed to the Hearing Examiners, AI maintains, are more appropriately put to Staff outside the confines of a formal proceeding. Since Staff is in rightful possession of the data - submitted by telecommunications carriers to NANPA pursuant to the FCC's orders - it is in the best position to answer the Commission's questions.

Moreover, AI asserts, if Staff's analysis of the data shows a specific carrier's non-compliance with the FCC's number conservation rules, the Commission can initiate a formal proceeding directly against such carrier. Cingular's view of the matter is essentially the same.

IV. Commission Analysis and Conclusion:

With respect to the questions from the Commission as set out in the Hearing Examiners' February 15, 2001 ruling, we find it appropriate to grant Staff its requested relief. In its motion, Staff established that the questions are best addressed to Staff outside of this or any docket. Staff informs that it is currently reviewing the issues surrounding NXX code exhaust in NPA 847 and is best positioned to answer the questions posed by the Commission. (Staff Mot. at 7-8). Staff also explained that the questions concern reclamation issues that are best addressed outside of a formal docket. (Id. at 8).

For its part, Cook County ignores these reasons and asserts, without any explanation, that the questions are best answered in a formal proceeding. (Cook County Response to Staff Motion, at 14). In light of the Staff's well reasoned arguments, and those set out by Ameritech Illinois and Cingular Wireless in their responses, Cook County's simple and unsupported assertion fails. Hence, we hereby withdraw our directive to the Hearing Examiners.

Staff's pleadings further demonstrate that the Commission's actions of February 15 and 16, 2001, gave Cook County the relief it sought in its motion. Cook County sought a Commission determination that some 29 NXX codes in the 847 NPA considered unassignable by the industry were in fact assignable. We determined that nine NXX codes designated unassignable should be assigned and directed NeuStar to implement that determination. In addition, Cook County asked that consumer education regarding the 224 overlay NPA not begin on February 17, 2001. The Commission directed NeuStar to postpone consumer education until it has reevaluated the status of exhaust in the 847 NPA. In pointing out this Commission activity, Staff has demonstrated that the only issues left for determination in this docket are those identified in the Hearing Examiners' ruling of February 15, 2001. Cook County's contentions to the contrary are misplaced.

Cook County contends that there are "outstanding issues" raised in its motion and points us to "the very relief articulated in the dockets caption, that NeuStar [sic] demonstrate that the 847 NPA is, in fact exhausted." (Id. at 14). Apparently Cook County believes that because its motion requested the Commission to conduct an inquiry, that indeed, just such a formal inquiry has been initiated in a docketed proceeding. The Commission, however, has not done so nor is it so inclined.

Instead, we have directed NeuStar to reevaluate the 847 NPA exhaust outside of this docket and outside of any formal proceeding. The Commission's direction to NeuStar on February 15, 2001, reflects our determination as to the proper course of action we deem most viable at this juncture. We likewise have been persuaded of the utility in this instance to pursue our questions outside the limitations of any docket proceeding.

Nor has Cook County presented an adequate basis to justify its request for a formal inquiry. It claims to have "raised the issue by referencing CUB's Motion to Initiate Reclamation of Unactivated Codes" in its motion for stay. (Cook County Response to Staff Motion, at 12). No such motion, however, has been filed with the Chief Clerk's Office. This means that there are no "allegations" pending in any proceeding before the Commission to which Cook County is able to attach itself. As for its own motion, Cook County alleged no independent facts supporting an investigation into whether "all conservation methods have been followed." Moreover, as Staff informs us, Cook County has disclaimed any suggestion that the Commission inquire into whether all conservation methods have been followed. (See Tr. 24).

The three questions in the Hearing Examiners' ruling of February 15, 2001 cannot be used by Cook County to support its contentions. Those questions concern issues of reclamation and were put into the docket as independent and stand alone questions by the Commission. As Staff maintains, Cook County has expressly denied that its motion requests the Commission to initiate a proceeding to reclaim NXX codes in the 847 NPA. (Tr. at 23) However hard we look at it, Cook County's contention that

the Commission's actions of February 15 and 16 have not given it the relief it sought in its motion is devoid of merit.

This docket remained viable due only to our insertion of certain questions to the Hearing Examiners. Indeed, we note that Cook County's pending motion for subpoenas duces tecum, was filed only after we had the Hearing Examiners put our questions into this docket. Having considered the position and arguments of Staff as per its motion, and in the interests of administrative economy, we are persuaded to grant the relief requested on both counts. First, that the questions should be withdrawn. Second, that on the basis of such action, there is no good reason to leave open this proceeding. Indeed, Cook County's response to the Staff motion effectively shows that the withdrawal of the Commission's questions leaves nothing to consider in this docket.

There is nothing in the exceptions filed by Cook County which persuades the Commission to do other than what Staff has requested. On the whole, Cook County fails to comprehend the nature of this particular docket, how it came to be, and the limitations of its scope. Hence, its arguments as to what is required for a contested or investigative or other type of formal proceeding in terms of party participation are meaningless to the situation at hand. Cook County's attempt to transform this docket into something more to its liking is as meritless as was the assumption that Docket 98-0847 was the appropriate forum in which to raise its initial motion.

Indeed, the responses of Staff, AI, and Cingular to those exceptions, make clear this Commission's authority to control its dockets and the issues to be considered therein. It is further clear on the basis of all the filings in this matter that Staff's proposal will better allow us to obtain the information we desire in a more direct, expedient and legal fashion. Cook County's exceptions would steer us in a direction that is less productive for present concerns. We decline the invitation.

V. Findings and Orderings Paragraphs

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) The Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (2) the recitals of fact and conclusions therefrom as set out in the prefatory portions of this Order are supported by the record and are adopted as findings of fact;
- (3) the motion of Staff filed on March 6, 2001 in this proceeding asks for reasonable relief and should be granted in full;

- (4) the questions we directed to the Hearing Examiners for determination in this docket are independent of this proceeding, best addressed outside a formal proceeding and should be withdrawn from this docket;
- (5) based on Finding (4), as well as the Commissions actions taken on February 15 and 16, 2001 as described above, there is nothing left in the docket to consider and hence the docket should be closed;
- (6) Any outstanding motions are disposed of in accordance with our determinations in this matter.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the questions put to the Hearing Examiners for determination in this docket as specified in their March 15, 2001 ruling for this case are withdrawn.

IT IS FURTHER ORDERED that with the withdrawal of said questions, this docket is now closed.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 9th day of May, 2001.

Chairman